

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2016

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JEFFREY ROWH,
Claimant Below, Petitioner

vs.) **No. 15-0426** (BOR Appeal No. 2050052)
(Claim No. 2012015998)

ROCK BRANCH MECHANICAL, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Jeffrey Rowh, by Patrick K. Maroney, his attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Rock Branch Mechanical, Inc., by Bradley A. Crouser, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated April 9, 2015, in which the Board affirmed a November 14, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 4, 2014, decision which denied Mr. Rowh's request for right shoulder injection and physical therapy. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Mr. Rowh worked as a laborer for Rock Branch Mechanical, Inc. On October 20, 2011, Mr. Rowh suffered an injury to his right shoulder while unloading heating and air conditioning equipment from a truck. Mr. Rowh waited until the middle of November to seek medical attention for his injury but ultimately received treatment from Linda Kessinger, M.D., who recommended that he have an MRI taken of his shoulder. Mr. Rowh then filed an application for workers' compensation benefits, and his claim was held compensable for overexertion and a sprain of the shoulder and arm. An MRI was then taken of Mr. Rowh's upper arm which

revealed a posterior, superior labral tear as well as a potential impingement of the suprascapular nerve. At this time, Dr. Kessinger advised Mr. Rowh to avoid overhead lifting. An MRI was also taken of the cervical spine which revealed multi-level spondylotic changes at several disc levels. Mr. Rowh was then treated by Jack Steele, M.D., who found that he had pain in his neck and right shoulder. He diagnosed Mr. Rowh with subacromial bursitis, impingement syndrome, rotator cuff sprain, and sprain of the shoulder and upper arm. Dr. Steele advised Mr. Rowh to perform home exercises and avoid overhead lifting. Mr. Rowh underwent several sessions of physical therapy.

Following this treatment, James Dauphin, M.D., reviewed Mr. Rowh's records. Based on the nature of the injury, he believed Mr. Rowh's ongoing symptoms were more likely related to pre-existing, degenerative changes instead of the compensable injury. Paul Bachwitt, M.D., then conducted an independent medical evaluation on Mr. Rowh. He determined that Mr. Rowh had reached his maximum degree of medical improvement and did not need any additional treatment. After undergoing this evaluation, Mr. Rowh was again treated by Dr. Steele who found that he had pain and weakness in his shoulder. Dr. Steele attributed Mr. Rowh's pain to subacromial bursitis, rotator cuff strain, impingement syndrome, and a sprain of the shoulder. Dr. Steele also requested that the claims administrator authorize physical therapy and right shoulder injections for Mr. Rowh. However, Dr. Dauphin reviewed Mr. Rowh's records and found that the requested treatments were unnecessary because there was no medical evidence that his ongoing symptoms were related to his work injury. On April 4, 2014, the claims administrator denied Dr. Steele's request for physical therapy and right shoulder injections based on Dr. Dauphin's report.

Mr. Rowh then testified by deposition stating that he noticed his shoulder felt weak and restricted after unloading heating and cooling equipment from a truck on October 20, 2011. Mr. Rowh admitted at the time that he believed he had merely strained a muscle in his shoulder. He testified that he received a course of physical therapy, which improved his symptoms, but that he had recently experienced an increase in his shoulder pain. Prasadarao B. Mukkamala, M.D., also reviewed Mr. Rowh's records. He believed that Dr. Steele's request for physical therapy and injections should be denied because Mr. Rowh had reached his maximum degree of medical improvement. Dr. Mukkamala found that Mr. Rowh sustained a soft tissue injury to his right shoulder which should have resolved within two to four weeks. He believed Mr. Rowh's ongoing symptoms were related to a non-compensable degenerative condition in his cervical spine. On November 14, 2014, the Office of Judges affirmed the claims administrator's April 4, 2014, decision. The Board of Review affirmed the Office of Judges' Order on April 9, 2015, leading Mr. Rowh to appeal.

The Office of Judges concluded that the claims administrator properly denied Mr. Rowh's request for treatment because it was not medically related and reasonably required to treat the compensable injury at the time of the request. The Office of Judges found that Mr. Rowh did not meet his burden of proving that he was entitled to the requested right shoulder injection and physical therapy. It noted that the medical evidence in the record showed that he sustained a right shoulder sprain on October 20, 2011, and that the injury should have resolved within a few weeks. The Office of Judges determined that Mr. Rowh's ongoing need for treatment was more likely related to his pre-existing degenerative changes instead of the

compensable injury. In reaching this determination, the Office of Judges relied on the records review of Dr. Dauphin because his assessment was supported by the remainder of the medical evidence in the record. The Board of Review adopted the findings of the Office of Judges and affirmed its Order.

We agree with the conclusions of the Board of Review and the findings of the Office of Judges. Mr. Rowh has not demonstrated that the requested right shoulder injection and physical therapy are medically related and reasonably required to treat his compensable shoulder sprain. The evaluation of Dr. Bachwitt demonstrates that Mr. Rowh has reached his maximum degree of medical improvement for his shoulder sprain and does not need any additional treatment for the compensable injury. Dr. Bachwitt's opinion is confirmed by the records reviews of Dr. Mukkamala and Dr. Dauphin. The remainder of the evidence in the record supports Dr. Dauphin's belief that Mr. Rowh's ongoing shoulder problems are related to non-compensable, degenerative changes. The Office of Judges had sufficient reasons to rely on Dr. Dauphin's opinion, particularly considering that even Dr. Steele, Mr. Rowh's treating physician, attributed his ongoing symptoms to subacromial bursitis and not the compensable shoulder sprain.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: April 12, 2016

CONCURRED IN BY:

Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Allen H. Loughry II

DISSENTING:

Chief Justice Menis E. Ketchum